

[2023] PBRA 78

Application for Reconsideration by Hearne

Application

1. This is an application by Hearne (the Applicant) for reconsideration of a decision made by a duty member dated 31 March 2023 not to terminate the licence imposed upon him in connection with a sentence of imprisonment for public protection (the **IPP licence**).
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the **Parole Board Rules**) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are the decision and the IPP licence termination dossier. I have also seen copies of email correspondence between the Applicant's legal representative and the Public Protection Casework Section (PPCS).

Background

4. The Applicant received a sentence of imprisonment for public protection (**IPP**) on 23 March 2006 following conviction for causing grievous bodily harm with intent.
5. He was released on licence on 22 October 2012 following an oral hearing.
6. The Applicant was 19 years old at the time of sentencing and is now 36 years old.

Request for Reconsideration

7. The application for reconsideration is dated 19 April 2023. It has been drafted by solicitors acting for the Applicant. It submits that the decision was both procedurally unfair and irrational.
8. This submission is supplemented by written arguments to which reference will be made in the **Discussion** section below. No submissions were made regarding error of law.

Current Reference



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



[@Parole_Board](https://twitter.com/Parole_Board)



0203 880 0885



INVESTORS
IN PEOPLE | Bronze

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 17 March 2023 under section 31A of the Crime (Sentences) Act 1997 to consider whether or not it would be appropriate to terminate his licence.
10. On 31 March 2023, a duty member dismissed the reference.

The Relevant Law

Crime (Sentences) Act 1997

11. Section 31A of the Crime (Sentences) Act 1997 provides the process for consideration of licences by the Parole Board which relate to 'preventative sentences' after the 'qualifying period' has passed.
12. The 'qualifying period' is ten years beginning with the date of release on licence, regardless of whether the prisoner has subsequently been recalled to prison (section 31A(5)).
13. A 'preventative sentence' is a sentence of imprisonment for public protection or a sentence of detention for public protection (including such a sentence of imprisonment or detention in a young offender institution or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006) (section 31A(5)).
14. If a prisoner has been released on licence (regardless of whether they have been subsequently recalled) and the qualifying period has expired and if Secretary of State has previously referred the case to the Parole Board, the case must be re-referred 12 months from the date of the previous determination (section 31A(3)).
15. The Parole Board shall direct the Secretary of State to make an order that the licence is to cease to have effect if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force (section 31A(4)(a)).
16. If the prisoner is in prison having been recalled, the test is different. The Parole Board must decide whether it is not necessary for the protection of the public for the prisoner, when released, to be released on licence in respect of the preventative sentence or sentences (section 31A(4B)(b)(ii)).
17. If the Parole Board directs release under section 31A(4B)(ii), that release is unconditional (section 31A(4C)).

Parole Board Rules 2019 (as amended)

18. Rule 28(1) of the Parole Board Rules provides the types of decision which may be considered for reconsideration, including decisions made in response to a referral by the Secretary of State under section 31A of the 1997 Act (rule 31(6) or rule 31(6A)): specifically, a decision to terminate a licence or a decision to dismiss the Secretary of State's reference.



19. Decisions concerning preventative sentences (as defined in section 31A(5) of the 1997 Act) are eligible for reconsideration under rule 28(2).

Procedural unfairness

20. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed, or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

21. In summary an Applicant seeking to complain of procedural unfairness under rule 28 must satisfy me that either:

- (a) express procedures laid down by law were not followed in the making of the relevant decision;
- (b) they were not given a fair hearing;
- (c) they were not properly informed of the case against them;
- (d) they were prevented from putting their case properly; and/or
- (e) the panel was not impartial.

22. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Irrationality

23. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

"The issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

24. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied.

25. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

The reply on behalf of the Respondent

26. The Respondent has submitted representations in response to this application dated 26 April 2023, to which reference will be made in the **Discussion** section below.



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



0203 880 0885

Discussion

27. The Applicant's legal representative submits that the decision was procedurally unfair as she was not given the opportunity to submit representations in respect of the matter. As such, the duty member made a decision without having had sight of the legal representations.

28. The Respondent submits that representations were not received in time and the case was referred to the Parole Board in line with PPCS policy.

29. The policy in question is the '*Managing Parole Eligible Offenders on Licence Policy Framework*' (implementation date 11 November 2020, re-issue date 5 April 2023) (the '*policy*') This policy is publicly available on the gov.uk website at <https://www.gov.uk/government/publications/managing-parole-eligible-of-fenders-on-licence-policy-framework>.

30. Although the policy referred to by the Respondent post-dates the decision, the sections upon which the Respondent relies are identical to those in the previous issued version issued on 1 September 2022.

31. The relevant part of the policy is found in section 3.5 (IPP licence termination) which "*applies to IPP individuals where a period of 10 years has elapsed since their original release on IPP licence*".

32. Section 3.5.7 provides:

"Where the individual is in contact with the Probation Service, the COM (Community Offender Manager)/Probation Practitioner must inform the individual that they have seven calendar days to submit representations in respect of the referral and ask them to complete the representations form, attached to the Termination of IPP Licence Report. Should the individual provide their own representations, then the COM/Probation Practitioner must submit these to PPCS together with the report."

33. Section 3.5.8 provides:

"Upon receipt of the Termination report, PPCS is responsible for compiling and formally referring the dossier to the Parole Board. Unless there are exceptional circumstances, PPCS must not submit the dossier to the Parole Board until the individual's representations have been received, or, if none have been received, until the 7-calendar day deadline for representations has expired. PPCS must submit the individual's representations to the Parole Board whenever they are received, unless the Parole Board have already issued their decision."

34. The Applicant's legal representative sets out the following timeline:

- (a) 22 March 2023: PPCS emailed the legal representative requesting representations that day.
- (b) 22 March 2023: legal representative advised PPCS that it was not possible to make representations that day due to work commitments and the fact that the Applicant was also at work.



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board

 info@paroleboard.gov.uk



@Parole_Board



0203 880 0885

- (c) 27 March 2023: legal representative received the dossier.
- (d) 12 April 2023: the Applicant approved the draft representations.
- (e) 12 April 2023: legal representative emailed/uploaded representations.
- (f) 18 April 2023: legal representative became aware that a paper decision had been made by the Parole Board on 31 March 2023.

35. The Respondent submits the following:

- (a) It is the responsibility of the Applicant to ensure that their legal representative is aware of the deadline to submit representations on their behalf.
- (b) The Applicant's COM discussed this with him directly on 13 March 2023.
- (c) The Applicant was also informed that the COM intended to submit the termination report on the same day and the deadline for representations was five working days from this date.
- (d) The Applicant signed the IPP Licence Termination Representations Form.
- (e) The termination report was submitted on 15 March 2022.
- (f) The representations deadline was therefore 22 March 2022.
- (g) The 'chaser' email sent to the legal representative on 22 March 2022 was a courtesy and not a legal requirement for a fair and lawful hearing.
- (h) PPCS referred the case to the Parole Board on 28 March 2023.
- (i) Legal representations were received on 12 April 2023, three weeks after the deadline and after the decision had been issued.

36. The IPP Licence Termination Representations Form is contained within the dossier. Although the Respondent submits otherwise, it is not signed by the Applicant. It does, however, give the details of his legal representative. It contains the following statements:

"I wish to make written representations through my legal representative and understand that it is my responsibility to ensure that they are aware of the deadline to submit any such representations to the Public Protection Casework Section, Public Protection Group."

"I understand that the deadline for submitting my representations is (5 working days from the date of the report completed by my Community Offender Manager)."

"I understand that my case will be referred to the Parole Board once the above deadline has passed, if my representations have not been submitted by that date."

"I understand that the referral to the Parole Board, for their consideration, is an automatic process and that the Parole Board will make the final decision on whether my IPP licence should be terminated."

"I understand that I will be notified of the Parole Board's decision on the application by my COM and/or Legal representative."

37. The policy is very clear. PPCS are not responsible for contacting a prisoner's legal representative when an IPP licence termination review is under way. The trigger event is set out in section 3.5.7 of the policy and begins, as it did in



this case, with the Applicant being told that he had five working days in which to submit representations.

38.The relevant deadline is clearly set out in publicly available information.

39.I cannot find any breach of rule or procedure on which to make a finding of procedural unfairness. The documented procedure was followed, the Applicant was informed of the content of the dossier, and he was not prevented from putting his case properly; he simply failed to do so in time.

40.Moreover, while the Applicant may feel disadvantaged by the timetable set out by PPCS, it was not open to the duty member to extend the window for representations: the discretion under rule 9 to alter prescribed time limits only applied within the Parole Board Rules and cannot be imposed on third party policies.

41.Finally, it cannot be said that the duty member breached any procedural rule in the making of the decision.

42.It is also submitted that the decision was irrational because the panel did not have all relevant information. The information in question was put forward in the late representations. Even if the information in question had been before the panel, no concrete submissions are made as to why the decision was so flawed that no other reasonable panel would have arrived at it. There is no irrationality here.

Decision

43.For the reasons I have given, I do not find the decision was procedurally unfair or irrational and accordingly the application for reconsideration is refused.

Stefan Fafinski
27 April 2023

